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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,284	02/19/2002	Serguei Endrikhovski	83958RLO	6627

7590 06/30/2005

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EXAMINER

MACKOWEY, ANTHONY M

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/079,284

Applicant(s)

ENDRIKHOVSKI ET AL.

Examiner

Anthony Mackowey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-9,11 and 14-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,5-9,11 and 14-23 is/are allowed.
- 6) ☒ Claim(s) 24 and 26 is/are rejected.
- 7) ☒ Claim(s) 25 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

The amendment filed March 7, 2005 has been entered and made of record.

Applicant's arguments, see page 9, filed March 7, 2005, with regard to the reference Colmenarez et al. and claims 24 and 26 have been fully considered but they are not persuasive. Colmenarez et al. teaches storing affective information in a corresponding digital image file and teaches personal affective tags. Please see rejections presented below for further discussion.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "By storing this information, the digital image files can subsequently be used to retrieve desired images.") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Moreover, Colmenarez teaches the digital image files can subsequently be used to retrieve desired images (page 1, paragraph 0017; page 2, paragraph 0030).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 24 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Colmenarez et al. (USPAP 200/0108241, hereafter Colmenarez).

With regard to claim 24, Colmenarez discloses a method (page 1, paragraph 0010) for determining and storing affective information from a user viewing digital images, comprising:

- a) providing a plurality of digital image files (page 1, paragraph 0014; A set of photos is retrieved from a storage area.);
- b) displaying the digital images from the files for viewing by a user (page 1, paragraph 0015; The set of photos is transmitted to the viewer for display.);
- c) using a camera to capture user images as user views each of the displayed digital images (page 1, paragraphs 0017 and 0020); The facial expression of the viewer is captured by the camera.)
- d) analyzing the captured user images to determine affective information for each of the digital images related to the facial expression of the user (page 1, paragraph 0017; page 2 paragraph 0022); and
- e) storing the affective information in the corresponding digital image files (page 2, paragraphs 0027 and 0029-0031; page 3, paragraph 0033).

Colmenarez teaches the photos are categorized at least by mood, feedback from the mood based photos is ranked according to the change in expression and a count is

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kept for a photo in order to track changes in response to the photo over time. Thus, if a photo is to be categorized changed and tracked according to the response it induces, affective information has inherently been stored with the corresponding digital image.).

With regard to claim 26, Colmenarez discloses a method (page 1, paragraph 0010) for determining and storing affective information from a user viewing digital images, comprising:

- a) providing a plurality of digital image files (page 1, paragraph 0014; A set of photos is retrieved from a storage area.) and providing a database for storing a plurality of personal affective tags, with each tag being linked to one of the digital image files (page 3, paragraph 0033; A count is kept for a photo.);
- b) displaying the digital images from the files for viewing by a user (page 1, paragraph 0015, The set of photos is transmitted to the viewer for display.);
- c) using a camera to capture user images as the user views each of the displayed digital images (page 1, paragraphs 0017 and 0020); The facial expression of the viewer is captured by the camera.);
- d) analyzing the captured user images to determine affective information for each of the digital images related to the facial expression of the user (page 1, paragraph 0017; page 2 paragraph 0022); and
- e) storing the affective information in the personal affective tags linked to each corresponding digital image file (page 3, paragraph 0033; The pattern recognition may keep a count (tag) where if a previously favored photo now illicit a negative response on more than one occasion, that photo may be removed

from the possible combination of photos presented to a viewer. Thus, the tag (count) has affective information linked to the corresponding digital image file.).

### ***Allowable Subject Matter***

Claims 1, 2, 5-9, 11, 14-23, are allowed.

Claims 25 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: claims 1, 9, 11, 21, 25 and 27 recite limitations not found in the prior art of record including determining the smile size of the user while viewing a displayed image. Claims 2 and 5-8 depend from claim 1. Claims 14-20 depend from claim 11. Claims 22 and 23 depend from claim 22.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

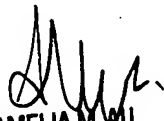
***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Mackowey whose telephone number is (571) 272-7425. The examiner can normally be reached on M-F 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amelia Au can be reached on (571) 272-7414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AM  
6/21/2005

  
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